



Iberdrola Renewables appreciates the opportunity to comment on the California Air Resources Board (CARB) Proposed Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions and appreciates the CARB's willingness to work with stakeholders to ensure its regulations are clear, equitable and effective. Despite the significant improvements, Iberdrola Renewables remains concerned with key aspects of the proposed regulations and seeks Board action to require CARB to enter into subsequent rulemaking prior to the implementation of the cap and trade regulation.

Electricity Importer Definition

Under CARB's September 12, 2011 Proposed Amendments to the Regulation the definition of "Electricity Importer" was revised such that the importer is the Purchasing Selling Entity (PSE) on the physical path where the delivery point is in the state of California. Iberdrola Renewables reiterates its concern that the PSE on the e-Tag may not correctly identify the entity that owns the power as it crosses the state border. In the previous version of CARB's regulation, the definition of Electricity Importer included a requirement that the entity holding title to the power as it crossed the state border incurred the compliance obligation for the transaction. Although the accurate demonstration of the entity holding title would have been complicated, this previous structure was much more legally defensible. The current regulation creates uncertainty around import transactions and is likely to subject CARB to significant legal challenge if implemented. The Board should explicitly recognize this important issue as one requiring subsequent rulemaking prior to the final cap and trade program implementation.

Resource Shuffling

Iberdrola Renewables applauds the CARB's action to remove the reference to "fraud" from the definition of "Resource Shuffling" in the revised version of the cap and trade regulation. However, significant uncertainty remains with regard to what specific activities will constitute Resource Shuffling under the final regulation. Iberdrola Renewables requests the CARB to identify this issue for further rulemaking and commit to work with interested stakeholders to clarify conditions under which import transactions would be considered Resource Shuffling.

Renewable Portfolio Standard (RPS) Conflict

Iberdrola Renewables is very concerned with the CARB's revised regulation's requirements for qualification of the Renewable Portfolio Standard Adjustment (RPS Adjustment). The revised regulation requires an Electricity Importer to demonstrate that a Renewable Energy Credit (REC) was used for RPS compliance in the same year that the RPS Adjustment is claimed. This requirement appears to conflict with the current RPS rules which require an entity to demonstrate sufficient RECs to support firming and shaping transactions for a calendar year but do not require the REC to be retired in that same year. Similarly the RPS legislation passed in 2011, and the ongoing rulemaking implementing it, focuses

entities on making retirements for multi-year compliance periods. The retirement targets a total number of RECs for the compliance period – not retirement quantity for a specific year. A cap and trade regulation requirement that reduces an importers flexibility to comply with the RPS is unacceptable and CARB must structure its regulation to be consistent with the broader California RPS program. Iberdrola Renewables requests the Board explicitly direct the CARB to enter into subsequent rulemaking to ensure the final regulation is aligned with the California RPS program and not in conflict.

Reporting Loopholes

Iberdrola Renewables understands that CARB has relied upon electricity importers to “self-report” emissions under its existing Greenhouse Gas reporting program. Captured entities have been required to report all import transactions, engage a certified CARB verifying entity to verify its annual reports, and pay significant charges for all non-specified import transactions. It appears numerous importing entities have not been participating in the existing CARB reporting program and it is unclear how the CARB will ensure these entities are appropriately captured when the cap and trade compliance obligations are implemented. Failure to properly capture all electricity importers will significantly disadvantage entities subject to the cap and trade regulations. Iberdrola Renewables requests CARB clarify its efforts to ensure comprehensive capture of all entities importing electricity into the state of California.

The current regulation also includes a carve out for “Asset Controlling Suppliers” which enables an entity to claim “specified” imports for all transactions regardless of the actual generation source. It is a fact that the identified Asset Controlling Supplier makes extensive market purchases with generation sources that are likely in excess of the specified level attributed to owned resources. Many of these transactions, conducted for the purpose of maximizing secondary revenues, include imports into the state of California from carbon-emitting generation sources and should trigger a corresponding compliance obligation. Enabling an Asset Controlling Supplier to report all electricity transactions as “specified” imports with a reduced emissions profile is inequitable and inappropriate. Iberdrola Renewables strongly urges the CARB to require all electricity importers to properly identify and report the emissions associated with import transactions to ensure a level playing field and avoid a considerable and unfair market advantage for Asset Controlling Suppliers.